

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CYNTHIA SWAROFF,

Plaintiff,

vs.

NANCY A. BERRYHILL, Commissioner
of Social Security,

Defendant.

4:17CV3063

ORDER

This matter is before the Court on the plaintiff Cynthia Swaroff's ("Swaroff") Motion to Enlarge Time to File Proof of Service (Filing No. 11). For the reasons stated below, the Motion is denied.

Swaroff filed suit on May 31, 2017, but, according to court records, she never requested summons, and summons were never issued. *See* NECivR 4.1 ("The plaintiff is responsible for completing a summons and arranging service.").

Due to Swaroff's failure to prosecute the case, the magistrate judge¹ issued an Order to Show Cause (Filing No. 9) on August 30, 2017. Swaroff did not respond to the Order to Show Cause, and on September 19, 2017, the magistrate judge recommended the case be dismissed (Filing No. 10). Later that same day, Swaroff filed the present Motion as well as Proof of Service (Filing No. 12). Swaroff has not objected to the magistrate judge's Findings and Recommendation.

Filing No. 12 is invalid to show service under the Federal Rules of Civil Procedure because the documents filed were only the proof of service pages (the second page of the summons form). The first page of the form, the actual summons, which should contain

¹The Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

the signature of the clerk and the court's seal was not included – likely because it was never issued.² Fed R. Civ. P. 4(a)(1) (“A summons must . . . be signed by the clerk . . . and bear the court's seal.”)

The Court will grant Swaroff's counsel the benefit of the doubt and presume the absence of any record of a summons being issued and the mere filing of the returns of service pages were not intended to mislead the Court or opposing counsel. Accordingly,

IT IS ORDERED:

1. Swaroff's Motion to Enlarge Time to File Proof of Service (Filing No. 11) is denied.
2. This Order does not alter the time Swaroff has to object to the magistrate judge's Findings and Recommendation (Filing No. 10).

Dated this 22nd day of September, 2017.

BY THE COURT:

s/ Robert F. Rossiter, Jr.
United States District Judge

²The signature and seal are provided by the Clerk's Office after the plaintiff requests summons.